

**DISTRICT JUDGE RICHARD A. JONES  
MAGISTRATE JUDGE MARY ALICE THEILER**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

DANIEL HALDANE, WENDEL  
JOHNSON, TIMOTHY MARTIN, and  
LEESHAWN REDIC, on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

v.

G. STEVEN HAMMOND, M.D., Chief  
Medical Officer of the Washington  
Department of Corrections, and DAN  
PACHOLKE, Secretary of the  
Washington Department of Corrections,  
in their official capacities,

Defendants.

NO. 15-CV-1810-RAJ-MAT

DEFENDANTS' ANSWER TO  
PLAINTIFFS' CLASS ACTION  
COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF  
AND JURY DEMAND

COME NOW the Defendants, G. STEVEN HAMMOND, M.D., and DAN PACHOLKE, by and through their attorneys of record, ROBERT W. FERGUSON, Attorney General, TIM LANG, Senior Assistant Attorney General, CANDIE M. DIBBLE, Assistant Attorney General, and AARON WILLIAMS, Assistant Attorney General, and file the following Answer to Plaintiffs' Class Action Complaint for Injunctive and Declaratory Relief (Complaint). ECF No. 1.

Under Federal Civil Rule 8(b), Defendants generally deny each allegation of fact in the Plaintiffs' Complaint unless the allegation of fact is expressly admitted. Defendants will not

1 respond to legal arguments contained in the Plaintiffs' Complaint and will deny them if it is  
 2 unclear if the Plaintiffs are asserting a factual or legal claim

### 3 I. INTRODUCTION

4 Defendants deny the allegations listed in this section of the Complaint as they call for  
 5 legal conclusions.

### 6 II. JURISDICTION AND VENUE

7 1. Admit.

8 2. Admit.

### 9 III. PARTIES

#### 10 Plaintiffs

11 3. Defendants admit Plaintiff, Daniel Haldane, is currently incarcerated at the  
 12 Monroe Correctional Complex in Monroe, Washington. Defendants admit Haldane's  
 13 medical records indicate a history of kidney stones. Defendants deny the remaining  
 14 allegations in this paragraph of the Complaint.

15 4. Defendants admit Plaintiff, Wendel Johnson, is currently incarcerated at the  
 16 Airway Heights Corrections Center in Airway Heights, Washington. Defendants deny the  
 17 remaining allegations in this paragraph of the Complaint.

18 5. Defendants admit Plaintiff, Timothy Martin, is currently incarcerated at the  
 19 Monroe Correctional Complex in Monroe, Washington. Defendants deny the remaining  
 20 allegations in this paragraph of the Complaint.

21 6. Defendants admit Plaintiff, LeeShawn Redle, is currently incarcerated at the  
 22 Stafford Creek Corrections Center in Aberdeen, Washington. Defendants deny the  
 23 remaining allegations in this paragraph of the Complaint.

#### 24 Defendants:

25 7. Defendants note that the statement, "In that role, he has a duty to ensure that  
 26 DOC provides constitutionally-adequate medical care to prisoners in its custody" is a legal

conclusion and, therefore, deny the same. Defendants admit the remaining allegations in this paragraph.

8. Admit.

#### IV. FACTUAL ALLEGATIONS

##### A. Inadequate Medical Decision-Making Process in the Washington Department of Corrections

9. Admit.

10. Admit. Defendants asserts the Offender Health Plan speaks for itself.

11. Admit.

12. Admit.

13. Deny. Between December 2012 and October 2015, 83% of medical consultation requests were decided at the facility level by the Facility Medical Director. Of those requests, 98% were approved. The remaining requests may then be presented to the CRC for review.

14. Admit.

15. Defendants admit a majority of the CRC meetings last around an hour and a half. The time for case presentations to the CRC may range depending on the complexity of each case and the number of cases presented.

16. Deny. In most instances whether a patient will receive the interventions requested by his or her treating provider is determined by a majority vote of the CRC members present on the call; if a specific intervention is not approved, usually alternative care is recommended. Dr. Hammond has the authority to overrule a vote of the CRC members.

17. Deny. The time for case presentations to the CRC may range depending on the complexity of the case.

18. Defendants admit members of the CRC may include providers who have not performed an examination of the patient. However, case discussions frequently include participation by multiple providers who have provided direct care to the patient.

19. Defendants admit the standards used to diagnose and treat “intractable pain” are defined by the Offender Health Plan. Defendants deny the remaining allegations listed in this paragraph.

20. Deny.

21. Deny.

22. Defendants admit about 60% of the proposed interventions eventually presented to the CRC for review are found not to be medically necessary as defined by the Offender Health Plan. However, the vast majority of proposed interventions are approved by the Facility Medical Director and are not presented to the CRC.

23. Deny. DOC medical care for chronic pain conditions focuses heavily on preservation and improvement in function, in accordance with leading medical guidelines on pain management.

24. Defendants admit offenders may file grievances related to the decision of the CRC or file grievances related to the CRC procedure itself. Defendants deny the remaining allegations in this paragraph.

25. Deny. Defendants provide offenders with clinically appropriate care to treat diagnosed conditions which are deemed to be medically necessary.

**B. Harm to Plaintiffs Caused by the Inadequate CRC System**

***Claims Related to Plaintiff Daniel Haldane:***

26. Deny.

27. Deny.

28. Deny.

1           29. Deny. These allegations are not documented in Haldane's medical record. The  
 2 medical record shows only one episode where offender Haldane declared a medical emergency  
 3 on October 5, 2014, for "low back pain and passing kidney stones for the last two days." His  
 4 urinalysis was normal showing no blood and no treatment was required.

5           30. Admit.

6           31. Admit.

7           32. Admit.

8           33. Defendants are neither able to admit nor deny the allegation listed in this  
 9 paragraph of the Complaint due to the failure to provide any dates related to Plaintiffs'  
 10 allegations.

11          34. Deny.

12          35. Admit.

13          36. Defendants admit "Toradol should not be taken by a patient with advanced  
 14 kidney disease." However, Haldane demonstrates normal kidney function. Defendants admit  
 15 Haldane has had multiple studies and treatment for nephrolithiasis over the course of his  
 16 incarceration.

17          37. Defendants admit Haldane is being provided with appropriate recommended  
 18 care with emphasis on prevention of kidney stone formation. Defendants deny remaining  
 19 allegations in this paragraph of the Complaint.

20          38. Defendants admit Haldane is not currently displaying any symptoms which  
 21 require additional treatment.

22          39. Defendants admit Haldane filed Grievance Log ID 13551351 related to  
 23 general complaints for treatment for kidney disease/pain. Defendants admit this grievance  
 24 was deemed to be fully exhausted through the Offender Grievance Program. Defendants  
 25 deny Haldane has filed any grievances asserting complaints with the decision of the CRC  
 26 or the CRC process. Defendants assert Haldane's grievance records speak for themselves.

40. Deny. Defendants admit there are no objective indicators that support the claim that Haldane suffers “chronic and substantial pain due to his regular passage of large kidney stones.” Defendants admit there is no objective evidence Haldane is having trouble eating as he is going to mainline and his weight has been stable. Defendants admit there are no medical reports in the chart to indicate a problem with sleep related to chronic pain. Defendants admit there is a significant history of mental health issues which could contribute to Haldane’s complaints. Defendants admit Haldane is not taking any mental health medications at this time.

41. Deny.

***Claims Related to Plaintiff Wendel Johnson:***

42. Admit.

43. Defendants admit symptoms described are related to general complaints of carpal tunnel syndrome. Defendants are without sufficient knowledge or information to form an opinion as to the truth of the Plaintiffs’ remaining claims and therefore deny the same.

44. Defendants deny Johnson’s symptom complaints which he presented to providers are consistent with carpal tunnel syndrome.

45. Deny.

46. Defendants are without sufficient knowledge or information to form an opinion as to the truth of the Plaintiffs’ remaining claims and therefore deny the same.

47. Admit.

48. Admit.

49. Defendants admit Johnson reports none of the interventions have been helpful. Defendants further admit Johnson’s pain rating has been consistent based on Johnson’s reports to his providers.

50. Admit.

51. Defendants admit Johnson's request for outside treatment was presented to the CRC, which deemed his request to not be medically necessary at that time. Defendants further admit in 2012, two years prior to the CRC review, Johnson filed a general grievance related to his right hand treatment under Grievance Log ID 12515494. Defendants admit this grievance was deemed exhausted under the Offender Grievance Program. Defendants admit Johnson filed Grievance Log ID 13549989 related to the CRC's decision to deny his request for outside treatment for his right hand issues. Defendants deny this grievance was exhausted under the Offender Grievance Program. Defendants further admit Johnson has filed multiple grievances related to several other medical conditions Johnson claims to be experiencing. Defendants assert Johnson's grievance records speak for themselves.

52. Defendants admit Johnson makes no complaints of pain for periods of months at a time, which include his most recent medical examination on November 4, 2015. Defendants are without sufficient knowledge or information to form an opinion as to the truth of the Plaintiffs' remaining claims and therefore deny the same.

53. Defendants admit Johnson was provided with medication to treat his complaints of pain which was stopped when Johnson reported they were ineffective. Defendants admit over the counter pain medication is available to Johnson.

54. Deny.

***Claims Related to Plaintiff Timothy Martin:***

55. Defendants admit Martin received surgery related to an inguinal hernia. Defendants deny the remaining allegations listed in this paragraph of the Complaint.

56. Defendants admit during clinic encounters, Martin arrives without a limp or abnormal gait, gets up from a lying to standing position without assistance, and does not appear to be in pain. Defendants deny the remaining allegations listed in this paragraph of the Complaint.

1           57. Defendants admit Martin was told he would have to use non-opioid means to  
2 deal with his complaints of pain. This involves general conditioning, home exercises,  
3 alternative pharmaceuticals including OTC NSAIDs and Acetaminophen, and serial  
4 monitoring to determine if his condition became more serious over time.

5           58. Defendants admit Martin was told he would have to use non-opioid means to  
6 deal with his complaints of pain. Defendants deny the remaining allegations listed in this  
7 paragraph of the Complaint.

8           59. Admit.

9           60. Admit. Defendants further admit Martin has also been examined multiple  
10 times for his complaints. The June 16, 2015 examination findings noted, "Left inguinal  
11 pain s/p left hernia repair: Late complications of a hernia repair include persistent groin  
12 pain and post-herniorrhaphy neuralgia, testicular complications, deep wound/mesh  
13 infection, recurrent hernia, and mesh migration and erosion. Mr. Martin physical exam is  
14 not contributory. He has no signs of infection, recurrent hernia or testicular pain. I will  
15 discuss his case with his PCP. Next step will be to get an ultrasound of the left inguinal  
16 area and if negative, present his case for CRC. I told Mr. Martin that his case may not be  
17 approved by CRC given the lack of physical findings."

18           61. Admit. Defendants assert the grievances records speak for themselves.

19           62. Deny.

20 ***Claims Related to Plaintiff LeeShawn Redic:***

21           63. Admit.

22           64. Defendants are without sufficient knowledge or information to form an  
23 opinion as to the truth of the Plaintiffs' claims and therefore deny the same.

24           65. Defendants are without sufficient knowledge or information to form an  
25 opinion as to the truth of the Plaintiffs' claims and therefore deny the same.  
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66. Defendants are without sufficient knowledge or information to form an opinion as to the truth of the Plaintiffs' claims and therefore deny the same.

67. Defendants admit Redic has reported issues related to hernia pain to medical staff who continue to monitor Redic's complaints and provide treatment as clinically indicated.

68. Admit.

69. Defendants admit in 2009 Redic filed a grievance under Grievance Log ID 911785 related to the CRC's determination which is deemed to be exhausted under the Offender Grievance Program. Defendants further admit Redic filed a grievance related to general complaints of hernia treatment under Grievance Log IDs 924345 and 910663. Defendants deny these grievances were exhausted under the Offender Grievance Program. Defendants assert Redic's grievance records speak for themselves.

70. Deny.

71. Deny.

***Impact of Inadequate CRC System on Plaintiff Class***

72. Deny.

**V. CLASS ACTION ALLEGATIONS**

Defendants neither admit nor deny the allegations listed in this section of Plaintiffs' Complaint as it calls for a legal conclusion.

**VI. CLAIM FOR RELIEF**

Defendants deny Plaintiffs' allegations set forth in this section of the Plaintiffs' Complaint.

**VII. REQUEST FOR RELIEF**

Defendants deny Plaintiffs are entitled to any of the relief set forth in this section of the Plaintiffs' Complaint.

# **VIII. AFFIRMATIVE DEFENSES**

1. Defendants allege the Plaintiffs have failed to state a claim upon which relief may be granted because they have not alleged facts that rise to the level of a civil rights deprivation under 42 U.S.C. § 1983.

2. All acts allegedly done by Defendants with respect to Plaintiffs were done in the reasonable belief that they were in accordance with the Federal Constitution, and the laws of the state of Washington and the United States. Defendants were also acting pursuant to published policies and field instructions, which they could have reasonably believed were constitutional. Defendants are, therefore, entitled to qualified immunity from damages.

3. Some of the Plaintiffs have failed to fully exhaust their administrative remedies prior to filing this lawsuit as required by the Prison Litigation Reform Act.

4. To the extent Plaintiffs seek any retrospective relief, the Defendants note that they are entitled Eleventh Amendment Immunity from retrospective relief.

5. Defendants reserve the right to allege additional affirmative defenses.

Having fully answered Plaintiffs' Complaint and having stated affirmative defenses, Defendants pray for judgment dismissing the Complaint and action with prejudice. Defendants also request costs and reasonable attorney's fees.

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**IX. JURY DEMAND**

Should this matter proceed to trial, Defendants demand that a jury determine all issues of fact.

RESPECTFULLY SUBMITTED this 21st day of December, 2015.

ROBERT W. FERGUSON  
Attorney General

s/ Tim Lang  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the date below, I caused to be electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Merf E. Ehman [Merf.Ehman@Columbialegal.org](mailto:Merf.Ehman@Columbialegal.org)

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

EXECUTED this 21st day of December, 2015, at Olympia, Washington.

s/ Judy Lonborg  
JUDY LONBORG  
Legal Assistant